



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

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Temple A. Reynolds, Executive Director
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October 3, 1984
(Revised October 4, 1984)

TO: John Baza, Mary Boucek, Ron Daniels, Jack Feight, Ron Firth, Wayne Hedberg, Joe Helfrich, Sue Linner, Thalia Pratt, Jim Smith, Arlene Sollis, Norm Stout, Mary Ann Wright

FROM: Dianne R. Nielson, Director

RE: Rules of Antiquities Section, Division of State History

Attached is a copy of the rules of the Division of State History, which were adopted in mid-1983. As you know, there has been considerable concern regarding the Division's responsibility for these rules. I met with Mel Smith and David Madsen concerning this problem, and we have arrived at the following procedure:

Any written or verbal communications from the Division to an operator which grants a permit, discusses regulations for exploration and development, or acknowledges intent to perform work regarding oil, gas, coal, or minerals should include the following paragraph. This applies only to state lands or lands owned by the state or its subdivisions.

Prior to any ground-disturbing activity on state lands or lands owned or controlled by the state or its subdivisions, a cultural resource clearance report must be filed with and approved by the Division of State History. A list of acceptable archeological contractors is available from the Division of State History.

It is not necessary to send an operator a copy of the rules. I would prefer to have an agency distribute its own rules, in order to avoid confusion. However, you may give an operator a copy of the attached rules, if requested.

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The sixty-day (60) period referenced in the attached Rule #1 applies only in instances where the Division of State History must conduct the study in-house. State History has made no commitment to time requirements if the clearance report is prepared by an acceptable contractors. However, the suggestion is that filing of that report and approval will be essentially simultaneous.

If any operator has questions about the regulation, they should contact Lamar Lindsay, who is in charge of permitting and review, at 533-4563.

If you have any questions or comments regarding the rules or this procedure, please see me.

vb
Attachment
cc: T. A. Reynolds
03350

Antiquities Section, Division of State History
Department of Community and Economic Development
300 Rio Grande, Salt Lake City, Utah 84101 (801/533-4563)

Regulations Implementing
Sections 63-11-2 and 63-18-18 through 31
Utah Code Annotated 1953, as Amended, Laws of Utah 1983
(see attachments A & B)

Introduction

The Antiquities Act of 1973 stated that "...the preservation, excavation, study, and exhibition of the state's archaeological, anthropological and paleontological resources (will) be undertaken in a co-ordinated and organized manner for the general welfare of the public." This general intent, to protect and manage Utah's unique cultural and fossil resources for the public good, is reflected in a number of separate legislative actions taken in 1953, 1973, 1977, and 1983. The laws generated in these acts are quite specific and the regulations which implement them are derived directly from the wording in the legislation.

The latest revision of the state's antiquities laws was made by the 1983 legislature and signed by the Governor. This act is essentially identical to the 1953 act with the exceptions that the responsible state agency has been changed from the Division of Parks and Recreation to the Division of State History and the rule making authority has changed from the Board of State Parks and Recreation to the Board of State History. However, the change of the responsibility makes it necessary to revise existing regulations and to coordinate regulations from all the state's antiquities laws in a coherent fashion. As a result, the following proposed regulations governing the conduct of archaeology and paleontology on public lands in the State of Utah have been developed and are being submitted by the Antiquities Section, Division of State History for approval by the Board of State History.

An initial version of the these proposed regulations has been submitted to a wide variety of federal and state agencies as well as private and professional archeological and paleontological organizations for comment. These comments have been considered in re-writing the regulations proposed below. One area of the initial version appeared to cause some confusion and must be addressed directly.

There was some concern about the effect these laws and regulations have on federal actions and federal land. The revised 1953 act states quite clearly that "Before any exploration or excavation in or on any prehistoric ruins, pictographs, hieroglyphs or any other ancient marking or writing or archaeological or paleontological deposit in Utah on any public lands, either state or federal, may be undertaken, a permit shall first be obtained from the division of state history (UCA 63-11-2)."

Clearly, the intent of the legislation is to coordinate all activities within the state of Utah. However, the state of Utah cannot regulate the actions of a federal agency (the responses to the initial proposed regulations make this abundantly clear) and on federally owned or controlled land the states antiquities act is necessarily directed towards the actions of individuals or groups rather than federal agency actions. In this respect, the state antiquities act and its implementing regulations are much like the hunting and fishing regulations which protect Utah's wildlife resources. That is, Utah's wildlife is protected and managed by licensing of individual actions, while federal actions dealing with wildlife on federal lands remains unhindered. Similarly, the permits issued by the division of state history for the survey and excavation of Utahs cultural and fossil resources are meant to protect and manage those resources without hindering federal actions directed towards the same ends. As an example, an archeological survey on Bureau of Land Management lands carried out by the Bureau or its designee would not be covered by the state's antiquities acts nor its regulations and would not require a state permit, while an archeological survey carried out on those same lands by a private company or individual as part of non-federally initiated actions would require a state permit.

General Regulations

1-Plans for proposed ground disturbing activities on state lands or lands owned or controlled by the state or its subdivisions which may effect archaeological sites or paleontological localities must be reviewed by the Division of State History prior to the initiation of those activities. Plans should be submitted sixty (60) days prior to project initiation. A survey (i.e. inventory) of areas determined to have a significant potential for cultural or fossil resources may be required (Sec. 63-11-2; 63-18-25).

2-A survey permit issued by the Division of State History must be obtained prior to any exploration (i.e. inventory) of archaeological sites or paleontological localities on public land in the State of Utah (Sec. 63-11-2; 63-18-25). Permit applications should be submitted at least two weeks prior to initiation of the project. Federal agency actions on federal lands are exempted.

3-A excavation permit issued by the Division of State History must be obtained prior to any excavation of archaeological sites or paleontological localities on public land in the State of Utah (Sec. 63-11-2; 63-18-25). Permit applications should be submitted at least two weeks prior to initiation of the project. Federal agency actions on federal lands are exempted.

4-State archaeological, anthropological or paleontological landmarks on privately owned property may not be disturbed without an excavation permit from the Division of State History. Three months notice of any proposed alteration to such landmarks must be given to the Division of State History by the property owner prior to the initiation of the alteration (Sec. 63-18-26).

5-Artifacts or fossils from sites on land owned or controlled by the state of Utah must be deposited in a museum within the State in accordance with procedures adopted by the Utah Museum of Natural History (Sec. 63-18-28). A portion of those artifacts or fossils may be retained by the excavator with the written consent of the Division of State History, but may not be removed from the state without the additional written consent of the Division (Sec. 63-11-2; 63-18-29).

6-Any person who discovers any archaeological site or paleontological locality on public lands shall promptly report such discovery to the Division of State History (Sec. 63-18-27).

7-The sale or exchange of any artifact or fossils that was collected or excavated in violation of the Antiquities Act or these regulation is prohibited (Sec. 63-18-30). Exchanges involving museum collections are exempted.

8-The forgery of archaeological or paleontological specimens with the intent to represent it as original is prohibited (Sec. 63-18-30).

Specific Permit Regulations

A-Archaeological Permits

1-General permits will be issued annually to qualified individuals (see attachment C). Required qualifications are:

a-Survey only-

1-Matching or exceeding the requirements of the Society of Professional Archaeologists and/or the Utah Professional Archaeological Council (see attachment D). Qualifications must be documented by vitae submitted with application.

2-Demonstrated familiarity with geography and cultural materials in permit area.

3-Curation agreement with a Utah Museum using procedures adopted by the Utah Museum of Natural History.

b-Survey and Excavation-

1-Same as above.

2-Affiliation with academic institution, archaeological corporation, or governmental agency.

3-Demonstration of adequate laboratory and publication facilities (see attachment D).

2-Survey permits for specific projects will be issued on demand to those holding general permits (see attachment E). A fee (set annually by the Board of State History at the April meeting) must accompany each application to cover the costs of a site and survey file literature search to be provided each applicant. The fee is to cover the cost of the permit application and the initial literature search; projects requiring extensive literature search time will be charged on an hourly basis.

3-Excavation permits for specific projects (see attachment F) will be issued to those holding general permits on receipt and acceptance by the Antiquities Section of the Division of State History of a research design for the project (see attachment G).

4-All work conducted under either survey or excavation permits must be properly documented (see attachment H) and an original copy of that documentation must be filed with the Division of State History prior to expiration of the permit.

5-All newly discovered sites identified under either survey or excavation permits must be recorded on Intermountain Archaeological Computer System site forms and be submitted to the Division of State History prior to the expiration of the permit. Smithsonian trinomial site numbers must be obtained for each site from the Division of State History.

6-Artifacts collected under either survey or excavation permits must be curated according to procedures outlined by the Utah Museum of Natural History (see attachment I).

B-Paleontological Permits

1-Hobby/Recreational Collecting Permits for lands owned or controlled by the state will be issued to individuals, families or groups upon receipt of an application form (see attachment J). A filing fee set annually by the State Board of History at the April meeting must accompany each application.

2-Commercial Collecting Permits for lands owned or controlled by the state will be issued upon receipt of an application form (see attachment J).

a-A filing fee set annually by the State Board of History must accompany each application.

b-Competency to conduct fieldwork and the sponsorship of an accredited scientific association or institution must be documented.

c-A sample or voucher collection will be required according to the paleontological sensitivity of the project area.

3-Research/Educational Collecting Permits for lands owned or controlled by the state will be issued upon receipt of an application form (see attachment J).

a-Each application must be accompanied by documentation of professional affiliation and qualifications (see attachment K).

b-Proper documentation of field work conducted under the permit, including photographs, map references, locality forms, and field notes, must be filed with the Division of State History prior to expiration of the permit. When work conducted under this permit results in the publication of data, a copy of such publication must be filed at the Antiquities Section.

c-No filing fee is required.

C-A permit will be invalidated upon receipt of evidence of any violations of these regulations or of the stated conditions of the permit.

D-Problems revolving around permit issuance or denial may be referred to the State Board of History for final resolution.